

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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PLR-149239-06

Date:

February 20, 2007

### Legend:

Fund =

Trust =

Company =

State A =

Firm 1 =

Firm 2 =

Accounting Firm =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Dear

This responds to a letter dated October 9, 2006, submitted on behalf of Fund. Fund requests that its election under § 855 of the Internal Revenue Code to treat dividends distributed after the close of a tax year as having been paid during that tax year be considered timely filed pursuant to § 301.9100-3 of the Procedure and Administration Regulations.

#### FACTS:

Trust is organized as a State A business trust and is registered under the Investment Company Act of 1940, as amended. Trust consists of several separate funds, one of which is Fund.

Company is responsible for overall management and administration of all funds in Trust. Company was responsible for reviewing and filing Fund's extension (Form 7004) for the income tax return (Form 1120-RIC) for the year that ended on Date 1. Prior to that year, Fund had elected to be treated as a Regulated Investment Company (RIC) under section 851 of the Internal Revenue Code. In Year 1, Company entered into a contract with Firm 1 to provide accounting and sub-administration services for each fund in Trust. In prior years, Firm 2, as administrator, prepared and filed the income tax returns for the funds. Accounting Firm had served as independent auditor and tax advisor for Trust; it prepared federal and state tax returns for some of the funds, but prior to Year 1 it had not prepared returns for Fund.

During Year 1, Company acquired a group of funds for which Accounting Firm provided tax services including filing extensions for income tax returns. Even though Fund was not recently acquired, Company believed that Accounting Firm would prepare and file the extensions for Fund, as it had done for the acquired funds, because one of the acquired funds had merged into Fund prior to the year that ended on Date 1. Accounting Firm believed that the extension would be filed by Company or by Firm 1. On Date 2, after it was revealed that no extension had been filed for Fund, Accounting Firm filed an income tax return for Fund.

Fund declared and paid dividends to the extent necessary to comply with the requirement to qualify as a RIC under section 852 of the Code, to eliminate income tax, and to eliminate excise tax under section 4982 of the Code. In accordance with section 855 of the Code, Fund elected on its federal income tax return for the year that ended on Date 1 to treat the dividends paid in its tax year that ended on Date 3 as paid in the prior tax year. The election, however, was not timely because the return was filed late and no extension had been filed or granted.

Fund makes the following additional representations:

1. The request for relief was filed by Fund before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief requested will not result in Fund having a lower tax liability in the aggregate for all years to which the regulatory election applies than that Fund would have had if the election had been timely made (taking into account the time value of money).
3. Fund did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Fund requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Fund did not choose to not file the election.

#### LAW AND ANALYSIS:

Section 855(a) of the Code provides that, if a RIC

- (1) declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period for any extension of time granted for filing such return), and
- (2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration, the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b), (c) and (d).

Section 1.855-1(b)(1) of the Income Tax Regulations sets forth the method of making the election and provides that the election must be made in the return filed by the RIC for the taxable year.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) set forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides

that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money.)

#### HOLDING:

Based upon the facts presented and representations made by Fund, we hold that Fund has demonstrated good cause for the granting relief under § 301.9100-3. Accordingly, Fund will be treated as having made a timely election under § 855(a) of the Code on its federal income tax return filed on Date 2 for the taxable year that ended on Date 1.

No opinion is expressed as to whether Fund's tax liability is not lower in the aggregate for the year to which the election applies than Fund's tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director will determine Fund's tax liabilities for the year involved. If the director determines that Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of Fund's election under § 855(a) of the Code. This ruling does not relieve Fund from any penalty that it may owe as a result of its failure to file its federal income tax returns on time. Except as specifically ruled upon above, no opinion is expressed or implied as to any federal excise or income tax consequences regarding Fund. In particular, no opinion is expressed or implied whether Fund qualifies as a RIC that is taxable under subchapter M, part 1 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

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Alice M. Bennett  
Chief, Branch 3  
Office of Associate Chief Counsel  
(Financial Institution & Products)

Enclosures:

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